

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DANIEL SZAROLETA,

07 Civ. 7639 (KNF)

Plaintiff,

-against-

METRO-NORTH COMMUTER
RAILROAD,

Defendant.

**NOTICE OF MOTION
FOR JUDGMENT
NOTWITHSTANDING THE
VERDICT OR FOR A NEW TRIAL
AND FOR A STAY OF ENFORCEMENT
OF THE JUDGMENT**

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of José R. Rios, dated the 8th day of August, 2008, upon the exhibits annexed thereto and upon all of the pleadings and proceedings had herein, the undersigned defendant will move before the Hon. Kevin Nathaniel Fox, United States Magistrate Judge, at the Courthouse located at 500 Pearl Street, New York, New York 10002, on the 26th day of August, 2008 at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order pursuant to FRCP §50(b) to set aside the verdict or, in the alternative, for an order pursuant to FRCP §59 directing a new trial on the ground that the verdict is 1) against the weight of the evidence; and 2) the result of palpably improper evidence submitted by the plaintiff. Defendant also moves pursuant to FRCP 62 (b) and (f) for a stay of the enforcement of the judgment pending the outcome of this motion and/or appeal thereof.

PLEASE TAKE FURTHER NOTICE, that all papers and affidavits, if any, to be submitted in opposition to this motion are to be served pursuant to FRCP 59(c).

Dated: New York, New York
August 8, 2008

TO: Marc Wietzke, Esq.
Law Offices of Michael Flynn, PC
1205 Franklin Avenue
Garden City, NY 11530
(516) 877-1234

Respectfully submitted,

RICHARD K. BERNARD
General Counsel
Metro-North Commuter Railroad
By: S/
José R. Rios (JRR-5785)
Attorneys for Defendant
Metro-North Commuter Railroad
347 Madison Avenue
New York, NY 10017

STATE OF NEW YORK :
 :ss:
COUNTY OF NEW YORK :

LAURA MATTHEWS, being duly sworn, deposes and says:

I am not a party to the action, am over 18 years of age and reside in the Bronx, New York.

On August 8, 2008, I served a true copy of the annexed MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT OR FOR A NEW TRIAL AND ENFORCEMENT OF THE JUDGMENT, MEMORANDUM OF LAW IN SUPPORT OF MOTION and EXHIBITS thereto, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

Marc Wietzke, Esq.
Law Offices of Michael Flynn, PLLC
1205 Franklin Avenue
Garden City, New York 11530

S/
LAURA MATTHEWS

Sworn to before me this
8th day of August, 2008

S/
NOTARY PUBLIC

Szaroleta, Daniel